

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2005-0210, Rowell Real Estate Investment Trust v. Town of Kingston, the court on March 16, 2006, issued the following order:**

The plaintiff, Rowell Real Estate Investment Trust, appeals the superior court's decision upholding the denial by the Town of Kingston Zoning Board of Adjustment (ZBA) of the plaintiff's request for a variance. We affirm.

We will uphold the trial court's decision unless the evidence does not support it or it is legally erroneous. Chester Rod and Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005). "Our inquiry is not whether we would find as the trial court found, but rather whether the evidence before the court reasonably supports its findings." Vigean v. Town of Hudson, 151 N.H. 747, 750 (2005). "The findings of the trial court are within its sound discretion, particularly when a view has been taken." *Id.* (quotation and brackets omitted).

For its part, the trial court must treat all factual findings of the ZBA as *prima facie* lawful and reasonable. RSA 677:6 (1996). "It may set aside a ZBA decision if it finds by the balance of probabilities, based on the evidence before it, that the ZBA's decision was unreasonable." Chester Rod and Gun Club, 152 N.H. at 580 (quotation and brackets omitted).

The plaintiff first argues that the trial court erroneously upheld the ZBA's determination that Rowell Road is not a class VI highway. It is unnecessary for us to reach this issue because, even if Rowell Road is a class VI highway, the plaintiff needed a variance to build on its property as the applicable ordinance required frontage on a class V or better highway.

The plaintiff contends that, if Rowell Road is a class VI highway, then, pursuant to RSA 674:41, I(c) (Supp. 2005), it did not need a variance to build on its lot. We disagree.

RSA 674:41, III (Supp. 2005) makes clear that RSA 674:41 (Supp. 2005) supersedes local ordinances, codes and regulations that are "less stringent." It does not supersede local ordinances, codes and regulations that are more stringent. While RSA 674:41, I, permits a building permit to be issued when a building lot has frontage upon a class VI highway, or even a private road, under certain conditions, the applicable town ordinance is more stringent because it requires that there be frontage upon a class V or better highway. *See* RSA 674:41, I(c) (class VI highways), :41, I(d) (private roads). Accordingly, even if

Rowell Road is a class VI highway, the plaintiff could not build on its lot unless it obtained a variance from the Town ordinance's requirement that the lot have a minimum of 200 feet of frontage on a class V or better highway.

The plaintiff next argues that the trial court erroneously upheld the ZBA's denial of a variance. The ZBA denied the variance because it found that: (1) granting the variance would not benefit the public interest; (2) denying the variance would not result in unnecessary hardship to the plaintiff; and (3) granting the variance would be contrary to the spirit and intent of the zoning ordinance. The trial court upheld the ZBA's denial on all three grounds. To affirm the trial court's decision, we need only find that the court did not err in its review concerning at least one of these factors.

We conclude that the trial court reasonably upheld the ZBA's determination that granting the variance would be contrary to the public interest. "[T]o be contrary to the public interest . . . the variance must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581 (quotations omitted). Frontage requirements generally "are a method of determining lot size to prevent overcrowding" and "may also reflect a need for safe access by fire trucks, police cars, and other emergency vehicles." Hannigan v. City of Concord, 144 N.H. 68, 76 (1999). Here, there was ample evidence to support a determination that granting the variance would impede safe access by emergency vehicles, and, thus, that granting it would violate the basic zoning objectives of the ordinance.

For instance, there was evidence in the record to support the trial court's finding that the subject property was "in a remote portion of the town not readily accessible for police or emergency vehicles." There was also evidence to support its finding that "[t]o access the subject property from Kingston by fire truck, police car or school bus, it is necessary to leave Kingston and travel well over a mile through East Kingston or through Newton and East Kingston to the easterly end of Rowell Road. Vehicles must then travel 2,000 feet east on Rowell Road in East Kingston and then across several hundred feet of what is now non-publicly maintained dirt driveways to reach the subject property." In light of these findings, which the record supports, the trial court reasonably could have upheld the ZBA's conclusion that to grant the variance would be contrary to the public interest.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**